THE
Dan Smoot Report

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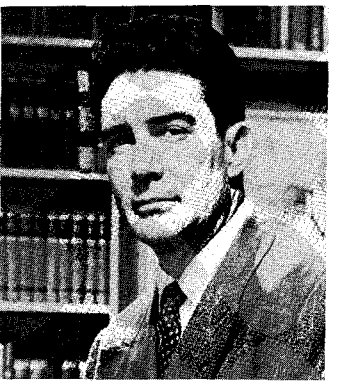

DAN SMOOT

THAT HAND FROM WASHINGTON

Thomas K. Waller, 2212 East Central Avenue, Wichita, Kansas, is a handicapped war veteran. Since his honorable discharge from the Army, he has operated a one-man independent business, doing home repair work. The most he has ever grossed in any one year is $3300.00. Like all such men trying to make a living as self-employed persons in their own trade, he has borne the heavy burden of keeping complicated records for the federal government. Without resources to hire tax experts and accountants, he has done his best, faithfully reporting and paying his federal income tax. According to his records, he has paid all taxes due, and has a credit balance of $165.00 with the federal government.[1]

On December 4, 1963, he received a summons from the Internal Revenue Service, ordering him to appear at the IRS office with all his records. This meant shutting down his business for a day, losing work, income, and, possibly, customers. The premptory order of the IRS contained the usual threats of the arrogant bureaucracy—threats of fines, seizure of his property, and prison sentence for failure to comply.[1]

The Fourth Amendment to the Constitution (often called the Fourth Article of the American Bill of Rights) says:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

This means that no agent of the federal government can legally enter your home or place of business and seize your papers and books, or demand to review them, or order you to bring them to him for review—unless he has first obtained, from a court, a search warrant, a warrant of arrest, or a subpoena. It also means that the court *may not issue* a warrant or subpoena, until the federal agent has presented to the court enough facts and evidence (has shown the court "probable cause") to indicate a violation of law. The agent must tell the court exactly what he is looking for, if he asks for a search warrant or a subpoena of records; and he must present all of his facts and allegations under oath.

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In issuing such orders as it sent to Mr. Waller, the Internal Revenue Service meets none of these constitutional requirements. Some agent of the service merely orders a taxpayer to do something and threatens him with imprisonment and other penalties if he refuses to obey. It happens to thousands of citizens throughout the nation every year.

There have been many frightening cases. For example, on March 5, 1962, about 30 Internal Revenue Service agents moved into the Post Office at Fordyce, Arkansas, and started ordering taxpayers to bring in their records for audit. Fordyce is the seat of a county whose total population is about 10,000. The revenue agents called in about 1000 people—10% of the total population. The business and social life of the community virtually stopped. What were the revenue agents looking for? They never did say. They filed no charges and made no specific accusations against anyone. They virtually took over the town, ruining business for a month, causing economic hardship for the whole population, saying merely that they were conducting an experiment.[2]

Every summons the Internal Revenue Service agents sent to taxpayers in Fordyce, Arkansas, was an illegal, unconstitutional invasion of privacy. Though angry and outraged, every taxpayer obeyed. Taxpayers generally obey the tyrannical orders of the Internal Revenue Service, because they are afraid; and they have good reason to be afraid. If they resist orders of the revenue agents, they will be stigmatized as "tax dodgers," trying to "cheat their government"; and they will be subjected to reprisals by the Internal Revenue Service. Very few taxpayers can afford to resist. The cost in time and money would bankrupt most. Indeed, wealthy men, innocent of any attempt to cheat on their income tax returns, have been ruined by the Internal Revenue Service. The case of B. B. Carter, of Amarillo, Texas, is a classic example.

B. B. Carter was a rancher in the Texas Panhandle. Oil was discovered on some of his land, and he became wealthy. In 1941, Mr. Carter engaged an accountant-lawyer in Amarillo to handle his tax matters and make his returns. In 1946, the accountant reported his own client to the Internal Revenue Service for filing fraudulent returns—in order to collect the fee which Internal Revenue Service pays to informers who give useable information about tax cheating. Mr. Carter had not tried to cheat or evade payment of taxes. He had merely signed the tax returns which his accountant prepared, and paid the tax which his accountant said he owed—as thousands of businessmen, unacquainted with complicated tax laws, do every year.[3]

Here is a summary of the Carter case, taken from *The Dallas Morning News,* December 9, 1960:

"The final battle in the strange 14-year war of B. B. Carter was decided Thursday with a court ruling that he will get back $21,000 of the $1,000,000 he spent fighting the U. S. government over his income tax.

"The U. S. Court of Appeals in New Orleans ordered the refund made to the Amarillo farmer, thus ending a case that began when Carter filed his income tax return in 1946 . . . .

" 'After having studied and considered the entire evidence, we are left with the definite and firm conviction that a mistake has been committed,' said the New Orleans court in its Thursday opinion . . . .

"Before his tax troubles, Carter, who admittedly is completely unversed in accounting and tax problems, owned property — mainly in the Texas Panhandle — in excess of $1,000,000.

"In 1941, he turned over his accounting to Walter Russell, an Amarillo lawyer-accountant who handled his accounts for six years. It was Russell who later turned in his own client to the IRS for tax fraud, court records show. The lawyer then represented Carter in . . . court proceedings . . . urging him to plead guilty . . . .

"Carter, 56, all of his property and wealth gone except a small grocery store in Amarillo, now lives with his wife in an apartment above the business."[3]

To effect collection from Mr. Carter, the Internal Revenue Service had seized and sold some of his valuable West Texas properties, for half what Mr. Carter had paid for them.[3]

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Obviously, any man who stands on his constitutional rights and tries to resist illegal orders issued by the Internal Revenue Service is an exceptional person. Thomas K. Waller, the disabled veteran who made a living as a home repair mechanic in Wichita, Kansas, is such a person; and today he is in jail because of his respect for the Constitution of the United States, and his fortitude in trying to uphold its principles.[1]

Mr. Waller was ordered to appear at the Internal Revenue Service office on December 16, 1963, with all his records. He appeared, but did not bring his records, correctly contending that, according to provisions of the Fourth Amendment, only a court could subpoena his records. The Internal Revenue Service obtained a federal court order, instructing Waller to appear in court, with his records, and "show cause why he should not be held in contempt of court."[1]

Mr. Waller appeared on May 7, 1964, but without his records, contending—again, correctly—that no proper warrant or subpoena had yet been issued, based on a show of probable cause and specification of charges, as required by the Fourth Amendment. What was the federal court's reaction to Mr. Waller's stand on constitutional principles? Here is the lead paragraph from "U. S. Judge Lashes Out in Tax Case," a news story in the May 8, 1964, issue of *The Wichita Eagle,* reporting on Mr. Waller's day in court:

"In a fiery courtroom oratory Thursday that left witnesses open-mouthed, U. S. District Judge Wesley E. Brown lashed out at persons who claim 'constitutional immunity' to avoid paying income taxes."[1]

Mr. Waller was not claiming constitutional immunity. He was not trying to evade payment of income tax. In fact, he had already paid more taxes than he owed.[1] He was merely trying to resist unconstitutional search-and-seizure procedures of the Internal Revenue Service. Mr. Waller was sent to jail, without bond and without formal charges against him—to remain there indefinitely, until he surrenders his records to the Internal Revenue Service, in compliance with an order issued in violation of requirements clearly specified in the Fourth Amendment.

The Summers Withholding Case

A. K. Summers, President of Premier Photo Service, Inc., 515 33rd Street, Parkersburg, West Virginia, is also currently waging a costly — and apparently losing — battle against tyrannical procedures of the Internal Revenue Service. Mr. Summers' fight involves the withholding law, which requires all employers to serve as unpaid tax collectors and bookkeepers for the federal government, subjecting them to heavy penalties (including imprisonment) if they make any mistakes, however innocent.

The withholding law was first proposed by the late Beardsley Ruml in 1941.[4] Its purpose was obvious: to forestall a tax revolt by the wage earners of America who, after eight years of New Deal squandering of public funds, were beginning to realize that *they,* and not rich people or others, were bearing the crushing burden of federal taxation. Ruml's withholding scheme provided a perfect means of keeping the bulk of taxpayers complacent and indifferent about taxes.

The average worker pays little attention to tax deductions from his pay check. He adjusts himself to take-home pay. If that sum is insufficient, he and his family resent the employer, not government. They do not demand lower taxes: they demand higher wages. Not only the expense, but the *stigma,* of tax collecting is placed on employers, rather than on government.

The withholding tax system can, indeed, make taxes pleasant. Internal Revenue Service schedules require employers to deduct (in many cases) more taxes than the employee owes. At the end of the year, government sends the employee a rebate — a bonus, bigger, in millions of cases, than any bonus the employer can give. Thus, workers are led to believe that beneficent government gives back to them a portion of the money which their employers have taken away.

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The withholding law is, of course, unconstitutional. The Thirteenth Amendment says:

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States . . . ."

Slavery and involuntary servitude mean, essentially, forcing someone, against his will, to work or serve.

When an employer is forced to serve as tax collector and bookkeeper for the government—without payment for his time and expense, and under threat of severe penalty for error in observing complicated and profuse administrative rules and requirements — most certainly involuntary servitude has been imposed on him by his own government. The withholding law also violates that portion of the Fifth Amendment which says that no person shall be "deprived of life, liberty, or property, without due process of law . . . ."

In 1941, when Beardsley Ruml first proposed the withholding law, President Roosevelt — anticipating that Congress might reject a taxing scheme which did such violence to our Constitution—appointed a group of experts (76 learned economists) to prepare a study which would show Congress that a withholding tax is necessary in the modern world, regardless of what the Constitution provides. New Deal economists presented such a study, but the House Ways and Means Committee rejected the withholding tax plan anyway.[5]

In November, 1941, Roosevelt's Secretary of the Treasury (Henry Morgenthau) made a direct plea to the Ways and Means Committee for a withholding tax. Again the Committee refused; but in December, 1941, the United States went to war; and President Roosevelt had an "emergency" with which to intimidate Congress.[5]

Early in 1942, Morgenthau again asked Congress for a withholding law. This time, he asked only for a "war emergency" measure—not a *permanent* withholding tax system. He called it a "Victory Tax," a *temporary* system to help the war effort. This approach was successful. The Revenue Act of 1942 (October 21, 1942) authorized a five percent Victory Tax on gross incomes — to be withheld from salaries. The Current Tax Payment Act of 1943 (June 9, 1943) absorbed the temporary withholding provision for the Victory Tax, making it permanent and applicable to all federal tax on personal incomes.[5]

Though clearly unconstitutional and though originally adopted as a temporary emergency measure during World War II, the withholding law has remained a permanent fixture of the federal income tax system—the keystone which keeps the system from collapsing. If it were not for withholding, wage earners (who pay most of the federal taxes on personal incomes) would become painfully aware of the burden they are carrying. They would wonder what government is doing with their money. They would question the value of benefits which politicians promise to dispense from the public treasury, when they realize that *public treasury* means *their* money. They would rebel at being forced to subsidize communist and socialist dictators abroad, and to pay for waste, extravagance, vote-buying, and corruption at home.

This would create chaos for the tax collectors and would produce more tax delinquencies than the collectors could count; and it would put the American people on the road to recapturing control of their own government. Hence, the federal bureaucracy will fight any taxpayer who does anything that even looks like an effort to tamper with the withholding system.

The case of A. K. Summers, Premier Photo Service, Inc., in Parkersburg, West Virginia, illustrates this point well.

The law requires employers to deduct federal income tax from wages, as and when paid, and to deposit the taxes, once a month, in a depository bank for the federal government. Mr. Summers has always been prompt in making the monthly deposits of all taxes collected.

In January, 1962, however, Mr. Summers changed his own *collection* procedure. Here, in his own words, is what he did, and why he did it:

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"Business people from West Virginia are required to collect a consumers' sales tax for the State, pay into the unemployment compensation fund, the entire amount of the benefits, pay a gross sales tax, from the gross amount of business done, regardless as to whether we make a profit, or have a loss. Of course, we have to collect the withholding tax and social security for the Federal Government. We found this portion of our activities very time-consuming, expensive . . . . The straw that broke this camel's back arrived when, in 1961, the State of West Virginia, passed a personal income tax, which not only increased our taxes, but created another free collection job for the tax spenders . . . . We decided that we could save 75% of the cost of computing these taxes, by only doing it 12 times a year instead of 52. So, we instituted the once-a-month withholding plan.

"The plan is very simple. Beginning the first week in every month we pay everyone the full week's pay and figure no taxes. This continues throughout the third week. The fourth week of the month we compute all the taxes for the month and take them out of that week's pay."

Mr. Summers has about 65 employees. He says once-a-month withholding saves his company about $650.00 a year in accounting costs—and has had a startling effect on employees, making them realize, as nothing else ever did that "this wild federal spending is coming out of their pockets." Mr. Summers gives a specific example:

"Mrs. A — whose salary is $125 a week — under the system of weekly deductions, would draw $99.29 a week, and she just took it for granted that was what she was making. Now, under our system of collection, she draws $125 the first three weeks of the month; and the last week, $22.68. Three weeks she went to the bank and actually received $125. She had it in her hands and was able to spend it. Now she realizes she pays in taxes almost a full week's pay out of a month."

Some employees pay *more* than one full week's pay out of each month. Mr. Summers says that one of his 70-dollar-a-week employees gets no check at all for the fourth week of each month—and still owes the federal government $4.75 for the month.

Mr. Summers' once-a-month withholding plan, receiving publicity, inspired a national effort to encourage other employers to try the plan. Mr. Summers got additional publicity for participating in this effort. On February 6, 1964, the District Director of the Internal Revenue Service at Parkersburg wrote a letter to Mr. Summers, saying:

"It has come to my attention that you have failed to comply with the requirements for collecting income tax required to be withheld from each wage payment *as and when made* to your employees . . . . If this failure continues, it may become necessary to invoke the provisions of section 7512 of the Code.

"If it does become necessary to take this action, you will be served with a special notice requiring that you collect income tax required to be withheld from your employees' wages *at the time and in the manner prescribed by law and regulations,* and that you place the withheld taxes in a special bank account by the end of the second banking day after you pay the wages, to be left on deposit until you pay the taxes over to the Government. You will also be required to file monthly returns and pay the taxes within 15 days after the close of the month for which the return is made. If the notice is delivered to you and you fail to comply, you may be charged with a misdemeanor and, upon conviction, you will be subject to a fine up to $5,000, imprisonment up to one year, or both."

Section 7512 of the Code, which the IRS threatened to invoke against Mr. Summers, is a provision aimed at chronic tax delinquents—employers who collect taxes from employees and then fail to turn the money over to the government. For 20 years, Mr. Summers has punctually deposited withheld taxes every month.

Mr. Summers told the IRS he would not obey the peremptory order, because he was depositing all taxes monthly as required by law. On April 3, 1964, an Internal Revenue agent called on Mr. Summers and demanded to see his payroll records. Mr. Summers asked to see the agent's search warrant. The agent left and came back a few hours later, with a summons, signed by himself. Knowing that the thing was illegal, Mr. Summers nonetheless obeyed. His cooperation did not assuage the tax agents. They invoked Section 7512 of the Code, as threatened in the letter of February 6.

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Mr. Summers filed a civil action in the U. S. District Court at Wheeling, West Virginia, asking a temporary restraining order to prohibit the Internal Revenue Service from imposing such a punitive tax-collecting-and-depositing system on him. He had his first day in federal court on May 11, 1964. I talked to him the following day. He was glum. He learned that a citizen cannot test the constitutionality of a federal law unless the federal government consents to having it tested. He cannot test in the courts the legality of an IRS administrative action or ruling against him. His only recourse is to violate the IRS order and then defend himself when the government institutes criminal proceedings against him. If he wins, he will prove that the government should not have harassed and prosecuted him in the first place. If he loses, he will go to prison.

What To Do

In 1910, when the Sixteenth Amendment (authorizing the federal income tax) was before the states for ratification, Richard E. Byrd (Speaker of the Virginia House of Delegates, father of U. S. Senator Harry Flood Byrd and the late Admiral Richard E. Byrd) warned that a federal income tax would eventually destroy liberty and constitutional government, saying:

"A hand from Washington will be stretched out and placed upon every man's business . . . . An army of Federal inspectors, spies, and detectives will descend upon the State. They will compel men of business to show their books and disclose the secrets of their affairs. They will dictate forms of bookkeeping. They will require statements and affidavits. On the one hand, the inspector can blackmail the taxpayer and on the other, he can profit by selling his secret to his competitor."[6]

Forty-nine years later—1959—the House Ways and Means Committee held formal hearings on the federal taxing system, hearing witnesses from many occupations. The witnesses generally agreed that the federal tax system is an appalling mess of complicated inequities. It stifles initiative, wastes human energy and resources, distorts the national economy, and has a corrupting effect on both taxpayers and tax collectors.[7]

Individual efforts to challenge the illegal power of the federal bureaucracy are made at frightful cost to the individuals. Those who know and care have a solemn responsibility to help—help by doing their utmost to educate other Americans to the truth of what is happening to our country.

When *enough* Americans know and care, they will elect to the national Congress men who understand and respect the principles of liberty. Such a Congress would repeal the unconstitutional withholding tax law. It would propose a constitutional amendment to repeal the Sixteenth Amendment and to prohibit the federal government from operating businesses in competition with its own citizens. Such an amendment already has broad popular support. If the withholding tax law were repealed, the people in overwhelming numbers would demand outright repeal of the income tax amendment.

The Fearless American

D. B. Lewis, President of Dr. Ross Pet Food Company, Los Angeles, pioneered patriotic advertising on radio and television. He has thus made an enormous contribution to the cause of freedom. In February of this year, a testimonial banquet for Mr. Lewis was held in Santa Monica, attended by about 1500 persons. I made the principal speech, telling about the pioneering job D. B. Lewis had done. The speech, recorded at the time of delivery, was later produced as a 1-disc album by KEY Records of Los Angeles. A long-playing (33-1/3 rpm), nonbreakable record, it has been described as "a hard-hitting, sometimes hilarious album which tells a star-spangled story."

The album is entitled "The Fearless American" (KLP 925) and is now on sale for $3.98 postpaid ($4.06 if ordered in Texas for Texas delivery, because of sales tax). An order blank is on page 160. Allow approximately two weeks for delivery.

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FOOTNOTES

(1) *The Wichita* (Kansas) *Eagle,* May 8 and 9, 1964, p. 1; Special Report by Laurence C. Smith, May 10, 1964

(2) AP story, *Bulletin,* Southern States Industrial Council, Nashville, Tenn., April 1, 1962

(3) "$21,000 of Million Spent Battling IRS Will Be Refunded," by James Lehrer, *The Dallas Morning News,* December 9, 1960; "Some Properties Sold Under Value, IRS Admits," by James Lehrer, *The Dallas Morning News,* December 10, 1960

(4) "Ruml's Effect on Our Way of Life," *The San Francisco Chronicle,* April 20, 1960, p. 30

(5) Special Study on the general history of the withholding tax system, prepared for U. S. Representative Gordon Scherer (R., Ohio), by the Library of Congress, September, 1959

(6) "What a Prophet — Richard E. Byrd," article by George Peck, *The American Statesman,* March 15, 1961, p. 4

(7) AP dispatch from Washington, *The Phoenix Gazette,* November 17, 1959; UPI story from Washington, *The Manchester* (N.H.) *Union Leader,* November 18, 1959; "Economist Blasts At Tax Practices," by the Washington Bureau of The News, *The Dallas Morning News,* December 11, 1959

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WHO IS DAN SMOOT?

Born in Missouri, reared in Texas, Dan Smoot went to SMU getting BA and MA degrees, 1938 and 1940. In 1941, he joined the faculty at Harvard as a Teaching Fellow, doing graduate work for a doctorate in American civilization. From 1942 to 1951, he was an FBI agent: three and a half years on communist investigations; two years on FBI headquarters staff; almost four years on general FBI cases in various places. He resigned from the FBI and, from 1951 to 1955, was commentator on national radio and television programs, giving *both* sides of controversial issues. In July, 1955, he started his present profit-supported, free-enterprise business: publishing *The Dan Smoot Report,* a weekly magazine available by subscription; and producing a weekly news-analysis radio and television broadcast, available for sponsorship by reputable business firms, as an advertising vehicle. The *Report* and broadcast give *one* side of important issues: the side that presents documented truth using the American Constitution as a yardstick. If you think Smoot's materials are effective against socialism and communism, you can help immensely—help get subcribers for the *Report,* commercial sponsors for the broadcast.

You can help educate and arouse the people who elect men responsible for harmful programs of government. When enough other Americans know and care as you do, political action to restore our Republic will come.

If *The Dan Smoot Report* was instrumental in bringing you to the point of asking what *you* can do about saving the country from mushrooming big government, here is a checklist for you: Have you urged others to subscribe to the *Report?* Have you sent them reprints of a particular issue of the *Report?* Have you shown them a Dan Smoot film? Have you ever suggested a Bound Volume of *The Dan Smoot Report* for use by speakers, debaters, students, writers? Have you read and passed on to others any of the Dan Smoot books — *The Invisible Government, The Hope Of The World, America's Promise?*

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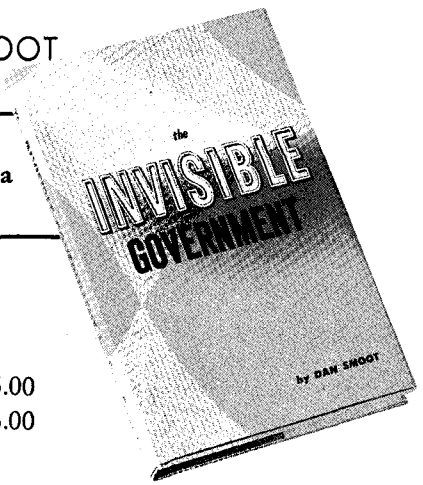

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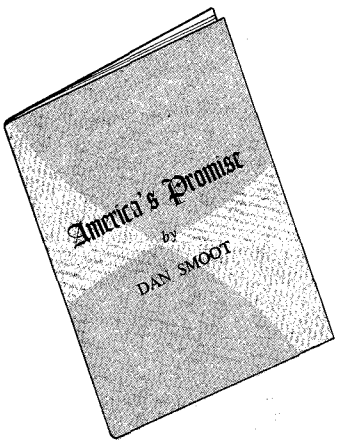

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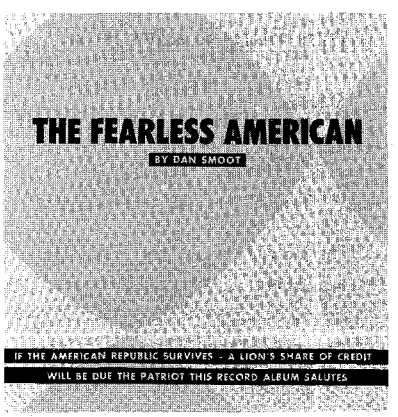
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